

REMARKS

Reconsideration and withdrawal of the requirement for species election are respectfully requested in view of the remarks herewith.

The Examiner characterized and required election of one of the following groups under 35 U.S.C. §121:

Group 1 – embodiments 1 and 2, represented by the system or method of delivering a plurality of single pulses or burst of pulses, respectively.

Group 2 – embodiments 3-7, represented by a signal generator and electrode system (or corresponding method) comprising a single pulse (claims 27-20 and 93-95), a plurality of bursts (claims 30-41 and 96-110), the electrode in a garment (claims 45-52 and 111-118), the amplitude to allow normal sleep (claims 53-55 and 119-121), and a plurality of electrodes (claims 60-66 and 126-132), respectively.

Group 3 – embodiments 8010, represented by the different monitors comprising hear rate, caloric, or accelerometer, respectively.

Group 4 – embodiments 11-12, represented by applying the electrodes to the same limb or different limbs, respectively.

Applicants elect, with traverse, Group I, which has been characterized by the Examiner as, “embodiments 1 and 2, represented by the system or method of delivering a plurality of single pulses or burst of pulses, respectively,” in order to advance prosecution of this case.

Applicants traverse the election requirement because the requirement, respectfully, lacks merit. The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct (MPEP §803). Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an

entire application can be made without serious burden,...even though it includes claims to distinct or independent inventions.” *Id.*

Neither of these criteria is present here. The claims of the instant application represent a web of knowledge and continuity of effort that merits examination in a single application. Further, it is unlikely that the Examiner would be unduly burdened by searching and examining both groups together. For example, a search and examination of any of Group 1, Group 2, Group 3, or Group 4 would invariably result in overlapping subject matter. It would, therefore, be prudent for the Examiner to search and examine the subject matter of Groups 1-4 in a simultaneous manner, not only for purposes of efficiency and temporal economy, but also to conserve PTO resources. Consequently, it is believed that the requirement for election is improper.

Applicants reserve the right to have un-elected species considered by the Examiner upon allowance of a generic claim, and further reserve the right to file one or more divisional applications directed to the un-elected groups.

CONCLUSION

Accordingly, reconsideration and withdrawal of the election of species requirement are respectfully requested, and an early action on the merits is earnestly solicited.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment in this Petition fee to Deposit Account No. 50-0320.

Respectfully submitted,
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